



# Senate

General Assembly

**File No. 584**

February Session, 2008

Substitute Senate Bill No. 32

*Senate, April 14, 2008*

The Committee on Appropriations reported through SEN. HARP of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING THE FINANCIAL CONDITION OF NURSING HOMES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17b-352 of the 2008 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective from passage*):

4 (a) For the purposes of this section and section 17b-353 of the 2008  
5 supplement to the general statutes, "facility" means a residential  
6 facility for the mentally retarded licensed pursuant to section 17a-277  
7 of the 2008 supplement to the general statutes and certified to  
8 participate in the Title XIX Medicaid program as an intermediate care  
9 facility for the mentally retarded, a nursing home, rest home or  
10 residential care home, as defined in section 19a-490 of the 2008  
11 supplement to the general statutes.

12 (b) Any facility [which] that intends to (1) transfer all or part of its  
13 ownership or control; [prior to being initially licensed;] (2) introduce

14 any additional function or service into its program of care or expand  
15 an existing function or service; or (3) terminate a service or decrease  
16 substantially its total bed capacity, shall submit a complete request for  
17 permission to implement such transfer, addition, expansion, increase,  
18 termination or decrease with such information as the department  
19 requires to the Department of Social Services, provided no permission  
20 or request for permission to close a facility is required when a facility  
21 in receivership is closed by order of the Superior Court pursuant to  
22 section 19a-545 of the 2008 supplement to the general statutes. The  
23 Office of the Long-Term Care Ombudsman pursuant to section 17b-400  
24 shall be notified by the facility of any proposed actions pursuant to this  
25 subsection at the same time the request for permission is submitted to  
26 the department and when a facility in receivership is closed by order of  
27 the Superior Court pursuant to section 19a-545 of the 2008 supplement  
28 to the general statutes.

29 (c) An applicant, prior to submitting a certificate of need  
30 application, shall request, in writing, application forms and  
31 instructions from the department. The request shall include [:(1) The]  
32 the name of the applicant or applicants [; (2)] and a statement  
33 indicating whether the application is for [(A)] (1) a transfer of  
34 ownership or control, (2) a new, additional, expanded or replacement  
35 facility, service or function, [(B)] (3) a termination or reduction in a  
36 presently authorized service or bed capacity, or [(C)] (4) any new,  
37 additional or terminated beds and their type, [; (3)] Applications, other  
38 than those seeking transfer of ownership or control, shall include (A)  
39 the estimated capital cost; [(4)] (B) the town where the project is or will  
40 be located; and [(5)] (C) a brief description of the proposed project.  
41 Such request shall be deemed a letter of intent. No certificate of need  
42 application shall be considered submitted to the department unless a  
43 current letter of intent, specific to the proposal and in accordance with  
44 the provisions of this subsection, has been on file with the department  
45 for not less than ten business days. For purposes of this subsection, "a  
46 current letter of intent" means a letter of intent on file with the  
47 department for not more than one hundred eighty days. A certificate  
48 of need application shall be deemed withdrawn by the department, if a

49 department completeness letter is not responded to within one  
50 hundred eighty days. The Office of the Long-Term Care Ombudsman  
51 shall be notified by the facility at the same time as the letter of intent is  
52 submitted to the department.

53 (d) Any facility acting pursuant to subdivision (3) of subsection (b)  
54 of this section shall provide written notice, at the same time it submits  
55 its letter of intent, to all patients, guardians or conservators, if any, or  
56 legally liable relatives or other responsible parties, if known, and shall  
57 post such notice in a conspicuous location at the facility. The notice  
58 shall state the following: [(A)] (1) The projected date the facility will be  
59 submitting its certificate of need application, [(B)] (2) that only the  
60 department has the authority to either grant, modify or deny the  
61 application, [(C)] (3) that the department has up to ninety days to  
62 grant, modify or deny the certificate of need application, [(D)] (4) a  
63 brief description of the reason or reasons for submitting a request for  
64 permission, [(E)] (5) that no patient shall be involuntarily transferred  
65 or discharged within or from a facility pursuant to state and federal  
66 law because of the filing of the certificate of need application, [(F)] (6)  
67 that all patients have a right to appeal any proposed transfer or  
68 discharge, and [(G)] (7) the name, mailing address and telephone  
69 number of the Office of the Long-Term Care Ombudsman and local  
70 legal aid office.

71 (e) The department shall review a request made pursuant to  
72 subsection (b) of this section to the extent it deems necessary,  
73 including, but not limited to, in the case of a proposed transfer of  
74 ownership or control, [prior to initial licensure] the financial viability  
75 of the applicant, the impact on the facility rate and the financial  
76 condition of the applicant, the financial responsibility and business  
77 interests of the transferee and the ability of the facility to continue to  
78 provide needed services, or in the case of the addition or expansion of  
79 a function or service, ascertaining the availability of the function or  
80 service at other facilities within the area to be served, the need for the  
81 service or function within the area and any other factors the  
82 department deems relevant to a determination of whether the facility

83 is justified in adding or expanding the function or service. The  
84 commissioner shall grant, modify or deny the request within ninety  
85 days of receipt thereof, except as otherwise provided in this section.  
86 Upon the request of the applicant, the review period may be extended  
87 for an additional fifteen days if the department has requested  
88 additional information subsequent to the commencement of the  
89 commissioner's review period. The director of the office of certificate of  
90 need and rate setting may extend the review period for a maximum of  
91 thirty days if the applicant has not filed in a timely manner  
92 information deemed necessary by the department. The applicant may  
93 request and shall receive a hearing in accordance with section 4-177 if  
94 aggrieved by a decision of the commissioner.

95 (f) The Commissioner of Social Services shall not approve any  
96 requests for beds in residential facilities for the mentally retarded  
97 which are licensed pursuant to section 17a-227 of the 2008 supplement  
98 to the general statutes and are certified to participate in the Title XIX  
99 Medicaid Program as intermediate care facilities for the mentally  
100 retarded, except those beds necessary to implement the residential  
101 placement goals of the Department of Developmental Services which  
102 are within available appropriations.

103 (g) The Commissioner of Social Services shall adopt regulations, in  
104 accordance with chapter 54, to implement the provisions of this  
105 section. The commissioner shall implement the standards and  
106 procedures of the Office of Health Care Access concerning certificates  
107 of need established pursuant to section 19a-643, as appropriate for the  
108 purposes of this section, until the time final regulations are adopted in  
109 accordance with said chapter 54.

110 Sec. 2. Section 17b-339 of the general statutes is repealed and the  
111 following is substituted in lieu thereof (*Effective from passage*):

112 (a) There is established a Nursing Home Financial Advisory  
113 Committee to examine the financial solvency of nursing homes on an  
114 ongoing basis and to support the Departments of Social Services and  
115 Public Health in their mission to provide oversight to the nursing

116 home industry [which promotes] on issues concerning the financial  
117 solvency of and quality of care provided by nursing homes. The  
118 committee shall consist of [seven members: The] the Commissioner of  
119 Social Services, or his designee; the Commissioner of Public Health, or  
120 his designee; the Secretary of the Office of Policy and Management, or  
121 his designee; [the director of the Office of Fiscal Analysis, or his  
122 designee;] and the executive director of the Connecticut Health and  
123 Education Facilities Authority, or his designee. [; and one  
124 representative of nonprofit nursing homes and one representative of  
125 for-profit nursing homes appointed by the Governor.]

126 [(b)] The Commissioner of Social Services and the Commissioner of  
127 Public Health shall be the chairpersons of the committee. [Any vacancy  
128 shall be filled by the appointing authority.]

129 [(c)] (b) The committee, upon receipt of a report relative to the  
130 financial solvency of and quality of care provided by nursing homes in  
131 the state, shall recommend appropriate action [for improving the  
132 financial condition of any nursing home that is in financial distress] to  
133 the Commissioner of Social Services and the Commissioner of Public  
134 Health.

135 [(d)] (c) Not later than January 1, [1999] 2010, and annually  
136 thereafter, the committee shall submit a report on its activities to the  
137 joint standing committees of the General Assembly having cognizance  
138 of matters relating to appropriations, human services and public health  
139 and to the select committee of the General Assembly having  
140 cognizance of matters relating to aging, in accordance with the  
141 provisions of section 11-4a.

142 Sec. 3. (NEW) (*Effective from passage*) (a) Each nursing home facility,  
143 as defined in section 19a-521 of the general statutes, shall submit  
144 quarterly reports of accounts payable by vendor and by days  
145 outstanding to the Commissioner of Social Services in a format  
146 prescribed by the commissioner. If such reports indicate a facility may  
147 be experiencing financial distress, the commissioner shall require the  
148 nursing home facility to submit annual audited financial statements

149 and may require a nursing home facility to report specific financial  
150 information, including, but not limited to, debt agreements and  
151 interim financial statements. In the case of a nursing home facility that  
152 is owned or managed by an entity that owns or manages multiple  
153 nursing home facilities, the commissioner may require the entity to  
154 report information concerning the financial condition of any such  
155 nursing home facility in a format prescribed by the commissioner.

156 (b) If the Commissioner of Social Services determines, based on a  
157 review of the information provided pursuant to subsection (a) of this  
158 section, that a nursing home facility has undergone an adverse change  
159 in financial condition, the commissioner shall notify the Commissioner  
160 of Public Health and shall require the nursing home facility to report  
161 monthly its cash availability and the status of vendor payments and  
162 employee payrolls. The Commissioner of Social Services may require  
163 the reporting of other financial information to assist in measuring the  
164 financial condition of the nursing home facility.

165 (c) The Commissioner of Social Services shall promptly provide to  
166 the State Comptroller copies of all the information received from  
167 nursing home facilities or other entities pursuant to subsections (a) and  
168 (b) of this section and a copy of any notices sent to the Commissioner  
169 of Public Health.

170 (d) The criteria to be used by the Commissioner of Social Services  
171 pursuant to subsection (b) of this section to determine whether a  
172 nursing home facility has undergone an adverse change in financial  
173 condition shall include, but not be limited to, (1) the frequency of  
174 Medicaid advances granted in accordance with section 119 of public  
175 act 07-1 of the June special session; (2) unfavorable working capital  
176 ratios of assets to liabilities; (3) a high proportion of accounts  
177 receivable more than ninety days old; (4) a high proportion of accounts  
178 payable more than ninety days old; (5) significant increases in accounts  
179 payable, unpaid state or municipal taxes, state user fees or payroll-  
180 related costs; (6) minimal equity or reserves or decreasing equity or  
181 reserves; (7) high levels of debt and high borrowing costs; (8)

182 significant increases in the level of debts and borrowing costs; and (9)  
183 significant operating losses for two or more consecutive years.

184 (e) If the Commissioner of Social Services determines that a nursing  
185 home facility is in financial distress that may lead to the facility having  
186 insufficient resources to meet its operating costs, the commissioner  
187 shall issue a report of such findings to the Nursing Home Financial  
188 Advisory Committee, established pursuant to section 17b-339 of the  
189 general statutes, as amended by this act.

190 Sec. 4. (NEW) (*Effective from passage*) Each nursing facility  
191 management services agency, as defined in subsection (n) of section  
192 19a-490 of the 2008 supplement to the general statutes, as amended by  
193 this act, for which rates paid by the state are set pursuant to section  
194 17b-340 of the 2008 supplement to the general statutes, shall annually  
195 report its costs to the Commissioner of Social Services on a form  
196 prescribed by the commissioner. Costs shall be reported on a fiscal  
197 year basis ending on the thirtieth day of September and submitted on  
198 or before the thirty-first day of December.

199 Sec. 5. Section 17b-4 of the general statutes is repealed and the  
200 following is substituted in lieu thereof (*Effective from passage*):

201 (a) The Department of Social Services shall plan, develop,  
202 administer, operate, evaluate and provide funding for services for  
203 individuals and families served by the department who are in need of  
204 personal or economic development. In cooperation with other social  
205 service agencies and organizations, including community-based  
206 agencies, the department shall work to develop and fund prevention,  
207 intervention and treatment services for individuals and families. The  
208 department shall: (1) Provide appropriate services to individuals and  
209 families as needed through direct social work services rendered by the  
210 department and contracted services from community-based  
211 organizations funded by the department; (2) collect, interpret and  
212 publish statistics relating to individuals and families serviced by the  
213 department; (3) monitor, evaluate and review any program or service  
214 which is developed, operated or funded by the department; (4)

215 supervise the establishment of pilot programs funded by the  
216 department in local communities which assist and support individuals  
217 and families in personal and economic development; (5) improve the  
218 quality of services provided, operated and funded by the department  
219 and increase the competency of its staff relative to the provision of  
220 effective social services by establishing and supporting ongoing staff  
221 development and training; and (6) encourage citizen participation in  
222 the development of social service priorities and programs.

223 (b) The Department of Social Services shall study continuously the  
224 conditions and needs of elderly and aging persons in this state in  
225 relation to nutrition, transportation, home-care, housing, income,  
226 employment, health, recreation and other matters. It shall be  
227 responsible in cooperation with federal, state, local and area planning  
228 agencies on aging for the overall planning, development and  
229 administration of a comprehensive and integrated social service  
230 delivery system for elderly persons and the aged. The department  
231 shall: (1) Measure the need for services; (2) survey methods of  
232 administration of programs for service delivery; (3) provide for  
233 periodic evaluations of social services; (4) maintain technical,  
234 information, consultation and referral services in cooperation with  
235 other state agencies to local and area public and private agencies to the  
236 fullest extent possible; (5) develop and coordinate educational  
237 outreach programs for the purposes of informing the public and  
238 elderly persons of available programs; (6) cooperate in the  
239 development of performance standards for licensing of residential and  
240 medical facilities with appropriate state agencies; (7) supervise the  
241 establishment, in selected areas and local communities of the state, of  
242 pilot programs for elderly persons; (8) coordinate with the Department  
243 of Transportation to provide adequate transportation services related  
244 to the needs of elderly persons; and (9) cooperate with other state  
245 agencies to provide adequate and alternate housing for elderly  
246 persons, including congregate housing, as defined in section 8-119e.

247 [(c) The Department of Social Services, in conjunction with the  
248 Department of Public Health, may adopt regulations in accordance



249 with the provisions of chapter 54 to establish requirements with  
250 respect to the submission of reports concerning financial solvency and  
251 quality of care by nursing homes for the purpose of determining the  
252 financial viability of such homes, identifying homes that appear to be  
253 experiencing financial distress and examining the underlying reasons  
254 for such distress. Such reports shall be submitted to the Nursing Home  
255 Financial Advisory Committee established under section 17b-339.]

256       Sec. 6. (NEW) (*Effective October 1, 2008*) The State Comptroller, or the  
257 Comptroller's designee, may examine and audit the financial and other  
258 records related to the operation of any nursing home facility, as  
259 defined in section 19a-521 of the general statutes, and any nursing  
260 facility management services agency, as defined in subsection (n) of  
261 section 19a-490 of the 2008 supplement to the general statutes, as  
262 amended by this act. All financial and other records of a nursing home  
263 facility and nursing facility management services agency shall be kept  
264 at such place and shall be preserved for such time as the State  
265 Comptroller, or the Comptroller's designee, may by regulation or  
266 order specify. The financial and other records of a nursing home  
267 facility and nursing facility management services agency shall be made  
268 available to the State Comptroller, or the Comptroller's designee, at all  
269 reasonable times, in connection with any examination and audit. The  
270 State Comptroller may summon witnesses, require the production of  
271 any necessary books, papers or other documents and administer oaths  
272 to witnesses, where necessary, for the purpose of an examination and  
273 audit pursuant to this section. The State Comptroller may request the  
274 Attorney General to petition the Superior Court for such order as may  
275 be appropriate to enforce the provisions of this section. The State  
276 Comptroller shall issue a report regarding the findings and any  
277 recommendations regarding actions that should be taken arising from  
278 an audit or examination conducted under this section. The State  
279 Comptroller may recommend that the Commissioner of Social Services  
280 seek the appointment of a receiver under section 19a-543 of the general  
281 statutes, as amended by this act.

282       Sec. 7. (NEW) (*Effective October 1, 2008*) (a) Any person having

283 knowledge of any matter involving the violation of state laws or  
284 regulations, mismanagement or gross waste of funds or danger to  
285 patient safety as a result of such violation, mismanagement or gross  
286 waste of funds occurring in any nursing home facility, as defined in  
287 section 19a-521 of the general statutes, or by a nursing facility  
288 management services agency, as defined in subsection (n) of section  
289 19a-490 of the 2008 supplement to the general statutes, as amended by  
290 this act, may transmit all facts and information in such person's  
291 possession concerning such matter to the State Comptroller or an  
292 employee or designee of the comptroller. The State Comptroller shall  
293 make such investigation as the comptroller deems proper regarding  
294 such report and any other information that may be reasonably derived  
295 from such report. The State Comptroller may summon witnesses,  
296 require the production of any necessary books, papers or other  
297 documents and administer oaths to witnesses, where necessary, for the  
298 purpose of an investigation pursuant to this section. Upon the  
299 conclusion of the investigation, the State Comptroller shall, where  
300 necessary, report any findings to the Commissioner of Social Services  
301 or the Commissioner of Public Health, as applicable, or to the Chief  
302 State's Attorney in matters involving criminal activity. The State  
303 Comptroller shall not, after receipt of any information from a person  
304 under the provisions of this section, disclose the identity of such  
305 person without such person's consent unless such disclosure is  
306 unavoidable, and may withhold records of such investigation, during  
307 the pendency of the investigation.

308 (b) (1) No officer or employee of a nursing home facility, or of a  
309 nursing facility management services agency, shall take or threaten to  
310 take any personnel action against any employee in retaliation for such  
311 employee's or officer's disclosure of information to the State  
312 Comptroller or an employee or designee of the Comptroller under the  
313 provisions of subsection (a) of this section.

314 (2) If an employee of a nursing home facility, or employee of a  
315 nursing facility management services agency, alleges that a personnel  
316 action has been threatened or taken in violation of subdivision (1) of

317 this subsection, the employee may notify the State Comptroller, who  
318 shall make an investigation pursuant to subsection (a) of this section.

319 (3) Not later than thirty days after learning of the specific incident  
320 giving rise to a claim that a personnel action has been threatened or  
321 has occurred in violation of this subsection, an employee of a nursing  
322 home facility, or employee of a nursing facility management services  
323 agency, alleging that such action has been threatened or taken may,  
324 after exhausting all available administrative remedies, bring a civil  
325 action in accordance with the provisions of subsection (c) of section 31-  
326 51m of the general statutes.

327 (4) In any proceeding under subdivision (3) of this subsection  
328 concerning a personnel action taken or threatened against any  
329 employee of a nursing home facility, or against any employee of a  
330 nursing facility management services agency, which personnel action  
331 occurs not later than one year after the employee first transmits facts  
332 and information concerning a matter under subsection (a) of this  
333 section to the State Comptroller, there shall be a rebuttable  
334 presumption that the personnel action is in retaliation for the action  
335 taken by the employee under subsection (a) of this section.

336 (5) Each nursing home facility and nursing facility management  
337 services agency shall post a notice of the provisions of this section in a  
338 conspicuous place which is readily available for viewing by the  
339 employees of the nursing home facility and employees of a nursing  
340 facility management services agency.

341 (6) No person who, in good faith, discloses information to the State  
342 Comptroller in accordance with this section shall be liable for any civil  
343 damages resulting from such good faith disclosure.

344 Sec. 8. (NEW) (*Effective October 1, 2008*) If the owner of real property  
345 or any improvements thereon on which a nursing home facility, as  
346 defined in section 19a-521 of the general statutes, is located is a related  
347 party to the owner of the nursing home facility, the rent or any  
348 payments for the use of such real property or improvements shall not

349 be in excess of an amount established by the Department of Social  
350 Services as fair rent pursuant to section 17b-340 of the general statutes.  
351 Any violation of this section shall constitute a substantial failure to  
352 comply with the requirements established under chapter 368v for  
353 purposes of disciplinary action pursuant to section 19a-494 of the  
354 general statutes. In addition to any action under said section, the  
355 Commissioner of Public Health may impose a civil penalty not  
356 exceeding twenty-five thousand dollars for each violation. As used in  
357 this section, "related party" means persons or organizations related  
358 through an ability to control, ownership, family relationship or  
359 business association, and includes persons related through marriage.

360       Sec. 9. (NEW) (*Effective October 1, 2008*) The proceeds of any loan in  
361 which the owner of a nursing home facility, as defined in section 19a-  
362 521 of the general statutes, has pledged, granted a lien or otherwise  
363 encumbered the assets of such nursing home facility shall be used  
364 solely for the purpose of operating such nursing home facility or  
365 providing improvements to the nursing home facility. Any violation of  
366 this section shall constitute a substantial failure to comply with the  
367 requirements established under chapter 368v of the general statutes for  
368 purposes of disciplinary action pursuant to section 19a-494 of the  
369 general statutes. In addition to any action under said section, the  
370 Commissioner of Public Health may impose a civil penalty not  
371 exceeding twenty-five thousand dollars for each violation.

372       Sec. 10. (NEW) (*Effective October 1, 2008*) The owner of a nursing  
373 home facility shall maintain insurance liability coverage in an amount  
374 no less than: (1) For damages by reason of personal injury to, or the  
375 death of, a person because of negligence or medical malpractice, in an  
376 amount of two million dollars and in the amount of ten million dollars  
377 per accident or event; and (2) for damages to property in an amount of  
378 fifty thousand dollars per accident or event. A certificate of proof of  
379 such insurance coverage shall be filed with the Commissioner of Public  
380 Health. The Commissioner of Public Health shall adopt regulations, in  
381 accordance with the provisions of chapter 54 of the general statutes, to  
382 establish any additional insurance requirements and may increase the

383 minimum amounts provided for in this section as necessary to protect  
384 public safety and welfare.

385 Sec. 11. Section 19a-490 of the 2008 supplement to the general  
386 statutes is repealed and the following is substituted in lieu thereof  
387 (*Effective October 1, 2008*):

388 As used in this chapter and sections 17b-261e of the 2008  
389 supplement to the general statutes, 38a-498b of the 2008 supplement to  
390 the general statutes and 38a-525b of the 2008 supplement to the general  
391 statutes:

392 (a) "Institution" means a hospital, residential care home, health care  
393 facility for the handicapped, nursing home, rest home, home health  
394 care agency, homemaker-home health aide agency, mental health  
395 facility, assisted living services agency, substance abuse treatment  
396 facility, outpatient surgical facility, an infirmary operated by an  
397 educational institution for the care of students enrolled in, and faculty  
398 and employees of, such institution; a facility engaged in providing  
399 services for the prevention, diagnosis, treatment or care of human  
400 health conditions, including facilities operated and maintained by any  
401 state agency, except facilities for the care or treatment of mentally ill  
402 persons or persons with substance abuse problems; and a residential  
403 facility for the mentally retarded licensed pursuant to section 17a-227  
404 of the 2008 supplement to the general statutes and certified to  
405 participate in the Title XIX Medicaid program as an intermediate care  
406 facility for the mentally retarded;

407 (b) "Hospital" means an establishment for the lodging, care and  
408 treatment of persons suffering from disease or other abnormal physical  
409 or mental conditions and includes inpatient psychiatric services in  
410 general hospitals;

411 (c) "Residential care home", "nursing home" or "rest home" means an  
412 establishment which furnishes, in single or multiple facilities, food and  
413 shelter to two or more persons unrelated to the proprietor and, in  
414 addition, provides services which meet a need beyond the basic

415 provisions of food, shelter and laundry;

416 (d) "Home health care agency" means a public or private  
417 organization, or a subdivision thereof, engaged in providing  
418 professional nursing services and the following services, available  
419 twenty-four hours per day, in the patient's home or a substantially  
420 equivalent environment: Homemaker-home health aide services as  
421 defined in this section, physical therapy, speech therapy, occupational  
422 therapy or medical social services. The agency shall provide  
423 professional nursing services and at least one additional service  
424 directly and all others directly or through contract. An agency shall be  
425 available to enroll new patients seven days a week, twenty-four hours  
426 per day;

427 (e) "Homemaker-home health aide agency" means a public or  
428 private organization, except a home health care agency, which  
429 provides in the patient's home or a substantially equivalent  
430 environment supportive services which may include, but are not  
431 limited to, assistance with personal hygiene, dressing, feeding and  
432 incidental household tasks essential to achieving adequate household  
433 and family management. Such supportive services shall be provided  
434 under the supervision of a registered nurse and, if such nurse  
435 determines appropriate, shall be provided by a social worker, physical  
436 therapist, speech therapist or occupational therapist. Such supervision  
437 may be provided directly or through contract;

438 (f) "Homemaker-home health aide services" as defined in this  
439 section shall not include services provided to assist individuals with  
440 activities of daily living when such individuals have a disease or  
441 condition that is chronic and stable as determined by a physician  
442 licensed in the state of Connecticut;

443 (g) "Mental health facility" means any facility for the care or  
444 treatment of mentally ill or emotionally disturbed persons, or any  
445 mental health outpatient treatment facility that provides treatment to  
446 persons sixteen years of age or older who are receiving services from  
447 the Department of Mental Health and Addiction Services, but does not

448 include family care homes for the mentally ill;

449 (h) "Alcohol or drug treatment facility" means any facility for the  
450 care or treatment of persons suffering from alcoholism or other drug  
451 addiction;

452 (i) "Person" means any individual, firm, partnership, corporation,  
453 limited liability company or association;

454 (j) "Commissioner" means the Commissioner of Public Health;

455 (k) "Home health agency" means an agency licensed as a home  
456 health care agency or a homemaker-home health aide agency;

457 (l) "Assisted living services agency" means an agency that provides,  
458 among other things, nursing services and assistance with activities of  
459 daily living to a population that is chronic and stable; [and]

460 (m) "Mobile field hospital" means a modular, transportable facility  
461 used intermittently, deployed at the discretion of the Governor, or the  
462 Governor's designee, for the provision of medical services at a mass  
463 gathering; for the purpose of training or in the event of a public health  
464 or other emergency for isolation care purposes or triage and treatment  
465 during a mass casualty event; or for providing surge capacity for a  
466 hospital during a mass casualty event or infrastructure failure; and

467 (n) "Nursing facility management services agency" means any  
468 person or entity that provides services in a nursing facility to manage  
469 the operations of such facility, including the provision of care and  
470 services.

471 Sec. 12. Subsections (a) and (b) of section 19a-491 of the general  
472 statutes are repealed and the following is substituted in lieu thereof  
473 (*Effective October 1, 2008*):

474 (a) No person acting individually or jointly with any other person  
475 shall establish, conduct, operate or maintain an institution in this state  
476 without a license as required by this chapter. Application for such

477 license shall be made to the Department of Public Health upon forms  
478 provided by it and shall contain such information as the department  
479 requires, which may include affirmative evidence of ability to comply  
480 with reasonable standards and regulations prescribed under the  
481 provisions of this chapter. The commissioner may require as a  
482 condition of licensure that an applicant sign a consent order providing  
483 reasonable assurances of compliance with the Public Health Code. In  
484 the case of a nursing home facility as defined in section 19a-521, no  
485 license shall be issued unless such facility is in compliance with (1) the  
486 provisions of the Public Health Code related to the maintenance and  
487 repair of all buildings and structures within which such an institution  
488 is established, conducted or operated, or (2) if applicable, the  
489 provisions of a consent order under subsection (b) of this section. The  
490 commissioner may issue more than one chronic disease hospital  
491 license to a single institution until such time as the state offers a  
492 rehabilitation hospital license.

493 (b) [If any] No person acting individually or jointly with any other  
494 person shall own real property or any improvements thereon, upon or  
495 within which an institution, as defined in subsection (c) of section 19a-  
496 490 of the 2008 supplement to the general statutes, as amended by this  
497 act, is established, conducted, operated or maintained [and] who is not  
498 the licensee of the institution [, such person shall submit a copy of the  
499 lease agreement to the department at the time of any change of  
500 ownership and with each license renewal application. The lease  
501 agreement shall, at a minimum, identify the person or entity  
502 responsible for] without a certificate that such real property or  
503 improvements are in compliance with those provisions of the Public  
504 Health Code relating to the maintenance and repair of all buildings  
505 and structures within which such an institution is established,  
506 conducted or operated. Such person shall apply biennially to the  
507 Commissioner of Public Health for such certificate. The application  
508 shall contain such information as the commissioner requires. The  
509 commissioner shall conduct an inspection and investigation and shall  
510 issue a certificate if such premises meet the requirements for such  
511 certificate. If a violation is found as a result of an inspection or



512 investigation, the commissioner may require the owner to sign a  
513 consent order providing assurances that repairs or improvements  
514 necessary for compliance with the provisions of the Public Health  
515 Code shall be completed within a specified period of time. Such order  
516 shall include a civil penalty of not more than one thousand dollars for  
517 each day that such owner is in violation of the provisions of such  
518 order. The order may also include a provision for the establishment of  
519 a temporary manager of such real property or improvements who  
520 shall have the authority to complete any repairs or improvements  
521 required by such order. The Department of Social Services may, upon  
522 request of such manager, advance funds from Title XIX payments to  
523 the facility to pay for the cost of such repairs or improvements  
524 pursuant to section 119 of public act 07-1 of the June special session.  
525 Upon request of the Commissioner of Public Health, the Attorney  
526 General may petition the Superior Court for such equitable and  
527 injunctive relief as such court deems appropriate to ensure compliance  
528 with the provisions of the consent order. The provisions of this  
529 subsection shall not apply to any property or improvements owned by  
530 a person licensed in accordance with the provisions of subsection (a) of  
531 this section to establish, conduct, operate or maintain an institution on  
532 or within such property or improvements.

533 Sec. 13. Subdivision (2) of subsection (b) of section 19a-493 of the  
534 general statutes is repealed and the following is substituted in lieu  
535 thereof (*Effective October 1, 2008*):

536 (2) Any change in the ownership of a facility or institution, as  
537 defined in subsection (c) of section 19a-490 of the 2008 supplement to  
538 the general statutes, as amended by this act, owned by an individual,  
539 partnership or association or the change in ownership or beneficial  
540 ownership of ten per cent or more of the stock of a corporation which  
541 owns, conducts, operates or maintains such facility or institution, shall  
542 be subject to prior approval of the department after a scheduled  
543 inspection of such facility or institution is conducted by the  
544 department, provided such approval shall be conditioned upon a  
545 showing by such facility or institution to the commissioner that it has

546 complied with all requirements of this chapter, the regulations relating  
547 to licensure and all applicable requirements of the Public Health Code.  
548 Any such change in ownership or beneficial ownership resulting in a  
549 transfer to a person related by blood or marriage to such an owner or  
550 beneficial owner shall not be subject to prior approval of the  
551 department unless: (A) Ownership or beneficial ownership of ten per  
552 cent or more of the stock of a corporation, partnership or association  
553 which owns, conducts, operates or maintains more than one facility or  
554 institution is transferred; (B) ownership or beneficial ownership is  
555 transferred in more than one facility or institution; or (C) the facility or  
556 institution is the subject of a pending complaint, investigation or  
557 licensure action. If the facility or institution is not in compliance, the  
558 commissioner may require the new owner to sign a consent order  
559 providing reasonable assurances that the violations shall be corrected  
560 within a specified period of time. Notice of any such proposed change  
561 of ownership shall be given to the department at least ninety days  
562 prior to the effective date of such proposed change. For the purposes of  
563 this subdivision, "a person related by blood or marriage" means a  
564 parent, spouse, child, brother, sister, aunt, uncle, niece or nephew. For  
565 the purposes of this subdivision, a change in the legal form of the  
566 ownership entity, including, but not limited to, changes from a  
567 corporation to a limited liability company, a partnership to a limited  
568 liability partnership, a sole proprietorship to a corporation and similar  
569 changes, shall not be considered a change of ownership if the  
570 beneficial ownership remains unchanged and the owner provides such  
571 information regarding the change to the department as may be  
572 required by the department in order to properly identify the current  
573 status of ownership and beneficial ownership of the facility or  
574 institution. For the purposes of this subdivision, a public offering of  
575 the stock of any corporation that owns, conducts, operates or  
576 maintains any such facility or institution shall not be considered a  
577 change in ownership or beneficial ownership of such facility or  
578 institution if the licensee and the officers and directors of such  
579 corporation remain unchanged, such public offering cannot result in  
580 an individual or entity owning ten per cent or more of the stock of

581 such corporation, and the owner provides such information to the  
582 department as may be required by the department in order to properly  
583 identify the current status of ownership and beneficial ownership of  
584 the facility or institution. For purposes of this subdivision, beneficial  
585 ownership includes ownership through any level or relationship of  
586 parent and subsidiary corporations and partnerships. To the extent  
587 required by this subdivision, the licensee of such facility or institution  
588 shall provide to the department the identities of, and any other  
589 information required by the department regarding the individual  
590 shareholders, partners or members that have a beneficial ownership  
591 interest in the facility or institution, as defined in subsection (a) of  
592 section 19a-490 of the 2008 supplement to the general statutes, as  
593 amended by this act.

594 Sec. 14. Section 19a-498 of the general statutes is repealed and the  
595 following is substituted in lieu thereof (*Effective October 1, 2008*):

596 (a) Subject to the provisions of section 19a-493, as amended by this  
597 act, the Department of Public Health shall make or cause to be made a  
598 biennial licensure inspection of all institutions and such other  
599 inspections and investigations of institutions and examination of their  
600 records as the department deems necessary.

601 (b) The commissioner, or an agent authorized by the commissioner  
602 to conduct any inquiry, investigation or hearing under the provisions  
603 of this chapter, shall have power to inspect the premises of an  
604 institution, issue subpoenas, order the production of books, records or  
605 documents, administer oaths and take testimony under oath relative to  
606 the matter of such inquiry, [or] investigation or hearing. At any  
607 hearing ordered by the department, the commissioner or such agent  
608 may subpoena witnesses and require the production of records, papers  
609 and documents pertinent to such inquiry. If any person disobeys such  
610 subpoena or, having appeared in obedience thereto, refuses to answer  
611 any pertinent question put to such person by the commissioner or such  
612 agent or to produce any records and papers pursuant to the subpoena,  
613 the commissioner or such agent may apply to the superior court for the

614 judicial district of Hartford or for the judicial district wherein the  
615 person resides or wherein the business has been conducted, setting  
616 forth such disobedience or refusal, and said court shall cite such  
617 person to appear before said court to answer such question or to  
618 produce such records and papers.

619 (c) The Department of Mental Health and Addiction Services, with  
620 respect to any mental health facility or alcohol or drug treatment  
621 facility, shall be authorized, either upon the request of the  
622 Commissioner of Public Health or at such other times as they deem  
623 necessary, to enter such facility for the purpose of inspecting programs  
624 conducted at such facility. A written report of the findings of any such  
625 inspection shall be forwarded to the Commissioner of Public Health  
626 and a copy shall be maintained in such facility's licensure file.

627 (d) In addition, the Commissioner of Social Services, or a designated  
628 representative of the Commissioner of Social Services, at the request of  
629 the Office of Health Care Access or when the Commissioner of Social  
630 Services deems it necessary, may examine and audit the financial  
631 records of any nursing home facility, as defined in section 19a-521, or  
632 any nursing facility management services agency, as defined in  
633 subsection (n) of section 19a-490 of the 2008 supplement to the general  
634 statutes, as amended by this act. Each such nursing home facility shall  
635 retain all financial information, data and records relating to the  
636 operation of the nursing home facility or nursing facility management  
637 services agency for a period of not less than ten years, and all financial  
638 information, data and records relating to any real estate transactions  
639 affecting such operation, for a period of not less than twenty-five  
640 years, which financial information, data and records shall be made  
641 available, upon request, to the Commissioner of Social Services or such  
642 designated representative at all reasonable times. In connection with  
643 any inquiry, examination or investigation, the commissioner or  
644 authorized agent may issue subpoenas, order the production of books,  
645 records and documents, administer oaths and take testimony under  
646 oath. The Attorney General, upon request of said commissioner, may  
647 apply to the Superior Court to enforce any such subpoena or order.

648 Sec. 15. Section 19a-503 of the general statutes is repealed and the  
649 following is substituted in lieu thereof (*Effective October 1, 2008*):

650 Notwithstanding the existence or pursuit of any other remedy, the  
651 Department of Public Health may, in the manner provided by law and  
652 upon the advice of the Attorney General, conduct an investigation and  
653 maintain an action in the name of the state for injunction or other  
654 process against any person or governmental unit to restrain or prevent  
655 the establishment, conduct, management or operation of an institution  
656 or nursing facility management services agency, without a license or  
657 certificate under this chapter.

658 Sec. 16. Section 19a-528a of the general statutes is repealed and the  
659 following is substituted in lieu thereof (*Effective October 1, 2008*):

660 For any application of licensure for the acquisition of a nursing  
661 home filed after July 1, 2004, any potential nursing home licensee or  
662 owner must submit in writing, a change in ownership application with  
663 respect to facility for which the change in ownership is sought. Such  
664 application shall include such information as the Commissioner of  
665 Public Health deems necessary and shall include whether such  
666 potential nursing home licensee or owner (1) has had civil penalties  
667 imposed through final order of the commissioner in accordance with  
668 the provisions of sections 19a-524 to 19a-528, inclusive, or civil  
669 penalties imposed pursuant to the statutes or regulations of another  
670 state, during [a] the two-year period preceding the application, (2) has  
671 had in any state [intermediate] sanctions, other than civil penalties less  
672 than ten thousand dollars, imposed through final adjudication under  
673 the Medicare or Medicaid program pursuant to Title XVIII or XIX of  
674 the federal Social Security Act, 42 USC 301, as from time to time  
675 amended, or (3) has had in any state such potential licensee's or  
676 owner's Medicare or Medicaid provider agreement terminated or not  
677 renewed. [.] The commissioner shall not approve such application to  
678 acquire another nursing home in this state for a period of five years  
679 from the date of final order on such civil penalties, final adjudication of  
680 such [intermediate] sanctions, or termination or nonrenewal, except for

681 good cause shown. [Notwithstanding, the provisions of this section,  
682 the Commissioner of Public Health, may for good cause shown, permit  
683 a potential nursing home licensee or owner to acquire another nursing  
684 home prior to the expiration of said five-year period.]

685 Sec. 17. Section 19a-543 of the general statutes is repealed and the  
686 following is substituted in lieu thereof (*Effective October 1, 2008*):

687 (a) The court shall grant an application for the appointment of a  
688 receiver for a nursing home facility upon a finding of any of the  
689 following: (1) Such facility is operating without a license issued  
690 pursuant to this chapter or such facility's license has been suspended  
691 or revoked pursuant to section 19a-494; (2) such facility intends to  
692 close and adequate arrangements for relocation of its residents have  
693 not been made at least thirty days prior to closing; (3) such facility has  
694 sustained a serious financial loss or failure which jeopardizes the  
695 health, safety and welfare of the patients or there is a reasonable  
696 likelihood of such loss or failure; [or] (4) there exists in such facility a  
697 condition in substantial violation of the Public Health Code, or any  
698 other applicable state statutes, or Title XVIII or XIX of the federal Social  
699 Security Act, 42 USC 301, as amended, or any regulation adopted  
700 pursuant to such state or federal laws; or (5) there has been gross  
701 financial mismanagement of the facility, as defined in subsection (c) of  
702 this section.

703 (b) The court, upon a determination pursuant to subsection (a) of  
704 this section that a receiver is appropriate, may, in addition to  
705 appointing a receiver for the nursing home facility, appoint a receiver  
706 for (1) any nursing facility management services agency, as defined in  
707 subsection (n) of section 19a-490 of the 2008 supplement to the general  
708 statutes, as amended by this act, to such facility; (2) any owner of real  
709 property, or improvements thereon, on which such nursing home  
710 facility is located; or (3) any legal entity owned or managed by a  
711 related party to the nursing home facility owners. The court may issue  
712 such orders as it deems necessary to any person that controls or  
713 possesses assets necessary for the receiver to fulfill its duties as set

714 forth in section 19a-545. As used in this subsection, "related party"  
715 means persons or organizations related through an ability to control,  
716 ownership, family relationship or business association, and includes  
717 persons related through marriage.

718 (c) As used in this section, "gross financial mismanagement" means:  
719 (1) Allowing more than thirty-five per cent of the facility's vendor  
720 accounts to be overdue for payment by more than one hundred twenty  
721 days; (2) allowing the facility payment of required employee pension  
722 or health insurance contributions to be overdue by more than sixty  
723 days; (3) maintaining an unfavorable working capital ratio of assets to  
724 liabilities for more than one fiscal year; (4) maintaining minimal equity  
725 or reserves for more than one fiscal year; (5) incurring significant  
726 operating losses for more than one fiscal year; or (6) any other criteria  
727 which the Commissioner of Social Services may further define in  
728 regulations adopted pursuant to the provisions of chapter 54.

729 Sec. 18. Section 19a-547 of the general statutes is repealed and the  
730 following is substituted in lieu thereof (*Effective October 1, 2008*):

731 (a) The court may appoint any responsible individual whose name  
732 is proposed by the Commissioner of Public Health and the  
733 Commissioner of Social Services to act as a receiver. Such individual  
734 shall be a nursing home administrator licensed in the state of  
735 Connecticut with substantial experience in operating Connecticut  
736 nursing homes or shall possess such other experience and education  
737 that the court deems satisfactory to appropriately and professionally  
738 implement such receivership. On or before July 1, 2004, the  
739 Commissioner of Social Services shall adopt regulations governing  
740 qualifications for proposed receivers consistent with this subsection.  
741 No state employee or owner, administrator or other person with a  
742 financial interest in the facility may serve as a receiver for that facility.  
743 No person appointed to act as a receiver shall be permitted to have a  
744 current financial interest in the facility; nor shall such person  
745 appointed as a receiver be permitted to have a financial interest in the  
746 facility for a period of five years from the date the receivership ceases.

747 (b) The court may remove such receiver in accordance with section  
748 52-513. A nursing home receiver appointed pursuant to this section  
749 shall be entitled to a reasonable receiver's fee as determined by the  
750 court. The receiver shall be liable only in his official capacity for injury  
751 to person and property by reason of the conditions of the nursing  
752 home. He shall not be personally liable, except for acts or omissions  
753 constituting gross, wilful or wanton negligence.

754 (c) The court, in its discretion, may require a bond of such receiver  
755 in accordance with section 52-506.

756 (d) The court may require the Commissioner of Public Health to  
757 provide for the payment of any receiver's fees authorized in subsection  
758 (a) of this section upon a showing by such receiver to the satisfaction of  
759 the court that (1) the assets of the nursing home facility are not  
760 sufficient to make such payment, and (2) no other source of payment is  
761 available, including the submission of claims in a bankruptcy  
762 proceeding. The state shall have a claim for any court-ordered fees and  
763 expenses of the receiver and any state advance payments to the  
764 nursing home facility after a receiver has been appointed which shall  
765 have priority over all other claims of secured and unsecured creditors  
766 and other persons whether or not the nursing home facility is in  
767 bankruptcy. [, to the extent allowed under state or federal law.]

768 Sec. 19. Section 19a-561 of the 2008 supplement to the general  
769 statutes is repealed and the following is substituted in lieu thereof  
770 (*Effective October 1, 2008*):

771 (a) As used in this section, "nursing facility management services"  
772 means services provided in a nursing facility to manage the operations  
773 of such facility, including the provision of care and services.

774 (b) On and after January 1, 2007, no person or entity shall provide  
775 nursing facility management services in this state without obtaining a  
776 certificate from the Department of Public Health.

777 (c) Any person or entity seeking a certificate to provide nursing



778 facility management services shall apply to the department, in writing,  
779 on a form prescribed by the department. Such application shall include  
780 the following information:

781 (1) (A) The name and business address of the applicant and whether  
782 the applicant is an individual, partnership, corporation or other legal  
783 entity; (B) the names of the officers, directors, trustees or managing  
784 and general partners of the applicant, the names of the persons having  
785 ten per cent or greater beneficial ownership interest in the applicant,  
786 and a description of each such person's relationship to the applicant;  
787 and (C) if the applicant is a corporation incorporated in another state, a  
788 certificate of good standing from the state agency with jurisdiction  
789 over corporations in such state;

790 (2) A description of the applicant's nursing facility management  
791 experience;

792 (3) An affidavit signed by the applicant and any of the persons  
793 described in subdivision (1) of this subsection disclosing any matter in  
794 which the applicant or such person (A) has been convicted of an  
795 offense classified as a felony under section 53a-25 or pleaded nolo  
796 contendere to a felony charge, or (B) has been held liable or enjoined in  
797 a civil action by final judgment, if the felony or civil action involved  
798 fraud, embezzlement, fraudulent conversion or misappropriation of  
799 property, or (C) is subject to a currently effective injunction or  
800 restrictive or remedial order of a court of record at the time of  
801 application, or (D) within the past five years has had any state or  
802 federal license or permit suspended or revoked as a result of an action  
803 brought by a governmental agency or department, arising out of or  
804 relating to business activity or health care, including, but not limited  
805 to, actions affecting the operation of a nursing facility, residential care  
806 home or any facility subject to sections 17b-520 to 17b-535, inclusive, or  
807 a similar statute in another state or country; and

808 (4) The location and description of any nursing facility in this state  
809 or another state in which the applicant currently provides  
810 management services or has provided such services within the past

811 five years.

812 (d) In addition to the information provided pursuant to subsection  
813 (c) of this section, the department may reasonably request to review  
814 the applicant's audited and certified financial statements, which shall  
815 remain the property of the applicant when used for either initial or  
816 renewal certification under this section.

817 (e) Each application for a certificate to provide nursing facility  
818 management services shall be accompanied by an application fee of  
819 three hundred dollars. The certificate shall list each location at which  
820 nursing facility management services may be provided by the holder  
821 of the certificate.

822 (f) The department shall base its decision on whether to issue or  
823 renew a certificate on the information presented to the department and  
824 on the compliance status of the managed entities. The department may  
825 deny certification to any applicant for the provision of nursing facility  
826 management services at any specific facility or facilities where there  
827 has been a substantial failure to comply with the Public Health Code  
828 or other laws and regulations applicable to the operation of such  
829 facility or facilities. If the department determines that a facility located  
830 in another state for which the applicant has provided nursing facility  
831 management services has substantially failed to comply with the laws  
832 and regulations of such state applicable to the operation of such facility  
833 or facilities, the department may deny certification to such applicant  
834 for the provision of nursing facility management services in this state.  
835 The department may limit or restrict the provision of nursing facility  
836 management services by any applicant or may limit the facilities for  
837 which it may provide such services.

838 (g) Renewal applications shall be made biennially after (1)  
839 submission of the information required by subsection (c) of this section  
840 and any other information required by the department pursuant to  
841 subsection (d) of this section, and (2) submission of evidence  
842 satisfactory to the department that any nursing facility at which the  
843 applicant provides nursing facility management services is in

844 substantial compliance with the provisions of this chapter, the Public  
845 Health Code and licensing regulations or other laws and regulations  
846 applicable to the operation of such facility or facilities, and if the  
847 applicant provides nursing facility management services in another  
848 state, evidence satisfactory to the department that such facilities  
849 substantially comply with the laws and regulations of such state  
850 applicable to the operation of such facility or facilities, and (3) payment  
851 of a three-hundred-dollar fee.

852 (h) In any case in which the Commissioner of Public Health finds  
853 that there has been a substantial failure to comply with the  
854 requirements established under this section or if the department  
855 determines that a facility located in another state for which the  
856 applicant has provided nursing facility management services has  
857 substantially failed to comply with the laws and regulations of such  
858 state applicable to the operation of such facility or facilities, the  
859 commissioner may initiate disciplinary action against a nursing facility  
860 management services certificate holder pursuant to section 19a-494. In  
861 addition to the remedies provided under section 19a-494, the  
862 commissioner may also assess such holder a civil penalty not to exceed  
863 fifteen thousand dollars per violation for any class A or class B  
864 violation, as defined in section 19a-527, that occur at a nursing facility  
865 for which such holder provides nursing facility management services.  
866 Failure to pay such penalties shall be subject to the remedies provided  
867 in section 19a-526.

868 (i) The department may limit or restrict the provision of  
869 management services by any nursing facility management services  
870 certificate holder against whom disciplinary action has been initiated  
871 under subsection (h) of this section.

872 (j) The department may, in implementing the provisions of this  
873 section, conduct any inquiry or investigation, in accordance with the  
874 provisions of section 19a-498, as amended by this act, regarding an  
875 applicant or certificate holder.

876 (k) No nursing facility management services certificate holder, who

877 is a related party to the nursing facility owner, shall be paid fees,  
 878 including expenses from a nursing facility for which it provides such  
 879 services, in excess of the management fee permitted by the Department  
 880 of Social Services in setting the Title XIX rate for such nursing facility.  
 881 As used in this section, "related party" means persons or organizations  
 882 related through an ability to control, ownership, family relationship or  
 883 business association, and includes persons related through marriage.

884 (l) Any person or entity providing nursing facility management  
 885 services without the certificate required under this section shall be  
 886 subject to a civil penalty of not more than one thousand dollars for  
 887 each day that the services are provided without a certificate.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17b-352
Sec. 2	<i>from passage</i>	17b-339
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	17b-4
Sec. 6	<i>October 1, 2008</i>	New section
Sec. 7	<i>October 1, 2008</i>	New section
Sec. 8	<i>October 1, 2008</i>	New section
Sec. 9	<i>October 1, 2008</i>	New section
Sec. 10	<i>October 1, 2008</i>	New section
Sec. 11	<i>October 1, 2008</i>	19a-490
Sec. 12	<i>October 1, 2008</i>	19a-491(a) and (b)
Sec. 13	<i>October 1, 2008</i>	19a-493(b)(2)
Sec. 14	<i>October 1, 2008</i>	19a-498
Sec. 15	<i>October 1, 2008</i>	19a-503
Sec. 16	<i>October 1, 2008</i>	19a-528a
Sec. 17	<i>October 1, 2008</i>	19a-543
Sec. 18	<i>October 1, 2008</i>	19a-547
Sec. 19	<i>October 1, 2008</i>	19a-561

**HS**                      *Joint Favorable Subst. C/R*

APP

**APP**                      *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Comptroller	GF - Cost	720,000	720,000
Public Health, Dept.	GF - Cost	616,250	677,000
Public Health, Dept.	GF - Revenue Gain	Potential Indeterminate	Potential Indeterminate
Department of Social Services	GF - Savings	Potential	Potential
Department of Social Services	GF - Cost	Potential	Potential
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	122,725	378,300

**Municipal Impact:** None

#### **Explanation**

This bill makes a variety of changes concerning the financial oversight requirements of nursing homes. It also implements further reporting mandates, insurance requirements and certain financial restrictions for nursing homes and related entities.

The bill permits the Comptroller's Office to examine and audit the financial and other records related to the operation of any nursing home facility. The Comptroller's Office would require the services of a consulting forensic accountant. Based on conducting 12 audits per year with an average cost of \$60,000 per audit, the OSC would require \$720,000 in funding to undertake this task. sHB 5021 (the budget bill, as favorably reported by the Appropriations Committee) contains no

<sup>1</sup> The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The first year fringe benefit costs for new positions do not include pension costs. The estimated first year fringe benefit rate as a percentage of payroll is 25.36%. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS fringe benefit rate is 33.27%, which when combined with the rate for non-pension fringe benefits totals 58.63%.

funding for these audits.

The Department of Public Health (DPH) will incur costs of approximately \$616,250 in FY 09 and \$677,000 in FY 10 to perform additional investigatory and prosecutorial duties in response to various policy changes contained within the bill.

FY 09 costs include: \$483,900 to support the partial year salaries of 4 Nurse Consultants, 1 Supervising Nurse Consultant, 2 Health Program Assistants, 1 Processing Technician, 1 Fiscal Administrative Officer and 1 Clerk Typist; \$78,500 in associated other expenses (including vehicles/gas); and \$53,850 in one-time equipment costs. FY 10 costs of \$677,000 reflect annualized salaries and ongoing other expenses.

Additional fringe benefits costs would be incurred (\$122,725 FY 09; \$378,300 FY 10).

A potential indeterminate revenue gain to the state would result to the extent that DPH imposes civil penalties of up to \$25,000 for violations of Sections 8 and 9; up to \$1,000 per day for violations of Section 12(b); up to \$15,000 per violation of Section 19(h); and up to \$1,000 a day for violations of Section 19(l).

It should be noted that sHB 5021 does include funding for 5 additional DPH staff to perform more frequent nursing home inspections. The agency's ability to conduct more frequent inspections would be mitigated to the extent that any of these resources are instead deployed to functions mandated within sSB 32.

Should the provisions of this bill enhance the financial condition and stability of the nursing home system, the state may realize savings under the Medicaid program through fewer interim rate increases and homes in receivership.

Should the enhanced reporting requirements of this bill lead to earlier or more frequent action by the Department of Social Services (DSS), additional administrative costs may result. sHB 5021 contains funding for five positions in DSS for enhanced financial monitoring

and review of nursing homes.

***The Out Years***

The annualized ongoing cost impact identified above would continue into the future subject to inflation; revenues from fines would vary with the number of violations and magnitude of penalties imposed.

**OLR Bill Analysis****sSB 32*****AN ACT CONCERNING THE FINANCIAL CONDITION OF NURSING HOMES.*****SUMMARY:**

This bill makes numerous changes in the law related to the financial oversight, management, operation, and licensure of nursing homes. It:

1. establishes new financial reporting requirements for nursing homes and nursing facility management services agencies and allows the state comptroller to conduct financial audits;
2. allows the court to appoint a receiver of a nursing home upon a finding of “gross financial mismanagement”;
3. makes changes to the Department of Public Health’s (DPH) certification process for management companies operating nursing homes;
4. requires nursing home property or building owners to comply with Public Health Code requirements concerning property maintenance and repair;
5. establishes minimum liability insurance coverage requirements for nursing homes;
6. changes certificate of need (CON) and licensure requirements when a nursing home changes ownership;
7. places certain restrictions on a nursing home operator’s ability to acquire a nursing home if they violate nursing home laws in Connecticut or in another state or have nursing home problems related to Medicare and Medicaid;



8. changes the membership of the Nursing Home Financial Advisory Committee; and
9. places restrictions on nursing home rental payments, loan payments, and management fees.

The bill applies to “nursing home facilities” (hereafter referred to as “nursing homes”), which the law defines as nursing homes, residential care homes, and rest homes with 24-hour nursing supervision (CGS § 19a-521).

Although residential care homes are included in the definition of nursing home facilities, they do not provide nursing care. Thus, it appears that the bill does not apply to these facilities.

EFFECTIVE DATE: October 1, 2008, except for the provisions pertaining to CON, financial reporting requirements, the Nursing Home Financial Advisory Committee, definitions, and the repeal of DPH regulations, which take effect upon passage.

### **§§ 3 & 4 — FINANCIAL REPORTING REQUIREMENTS**

#### ***Nursing Homes***

The bill establishes new financial reporting requirements for nursing homes. It requires every home to report quarterly to the Department of Social Services (DSS) commissioner on its accounts payable by vendor and days outstanding. If the report indicates a home is experiencing financial distress, the commissioner (1) must obtain its annual audited financial statements and (2) may require the home to report additional financial information, including debt agreements and interim financial statements. If a nursing home is owned by an entity with multiple homes, the commissioner may require the entity to report financial information on any of its homes. The bill also requires him to report to the Nursing Home Financial Advisory Committee (see below) if he finds that a home is in financial distress and may not meet its operating costs.

If, after reviewing the financial information, the DSS commissioner

determines that a home's financial condition has changed for the worse, he must notify the DPH commissioner and require the nursing home to report monthly on its cash availability, vendor payment status, and employee payrolls. The DSS commissioner may ask a home to submit additional financial information to make that determination.

The bill establishes criteria for the DSS commissioner to use to evaluate whether a nursing home's financial situation has changed, including:

1. the frequency of Medicaid advances granted in accordance with PA 7-01 JSS;
2. unfavorable ratios of working capital assets to liabilities;
3. a high proportion of accounts receivable or payable for more than 90 days;
4. significant increases in accounts payable, unpaid state or local taxes, state user fees, or payroll related costs;
5. minimal or decreasing equity or reserves;
6. high levels or significant increases in debt and borrowing costs; and
7. significant operating losses for two or more consecutive years.

The bill also requires the DSS commissioner to promptly provide the state comptroller with copies of all information received from these homes and any notices sent to the DPH commissioner.

Currently, nursing homes annually submit financial information to DSS for the purpose of per-diem rate setting. The information they submit includes expenditures, revenue, and balance sheet data. DSS audits this information but does not use it to determine the home's financial viability.

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***Nursing Facility Management Services Agencies***

The bill also requires nursing facility management services agencies whose rates DSS sets to report their fiscal year costs to DSS annually by December 31.

**§§ 6 & 7 — STATE COMPTROLLER MONITORING OF NURSING HOME FINANCES*****Financial Audits and Examinations***

The bill allows the comptroller, or her designee, to examine and audit financial and other related records of nursing homes and nursing facility management services agencies. It requires these entities to maintain their records on site and make them available to the comptroller, or her designee, at all reasonable times.

The comptroller may (1) summon witnesses; (2) obtain necessary books, papers, or documents; and (3) administer oaths to witnesses. She may also ask the attorney general to petition the Superior Court to obtain any court orders necessary to conduct an examination or audit.

Upon completing an audit or examination, the comptroller must report her findings and recommendations, which may include that DSS apply for the court to appoint a receiver.

***Investigations***

Under the bill, anyone who knows of any state law or regulation violations, mismanagement or gross waste of funds, or resulting danger to patient safety occurring in any nursing home or nursing facility management services agency may inform the comptroller, or her employee or designee. The comptroller must investigate the matter and, when necessary, report her findings to the DSS and DPH commissioners. If the matter involves a crime, she must report it to the chief state's attorney. The comptroller may not reveal the informant's name without consent, except where it is unavoidable during an investigation. While an investigation is pending, the comptroller may withhold investigation records.

***Whistleblower Protections***

The bill prohibits an officer or employee of a nursing home or nursing home facility management agency from threatening or taking any negative, retaliatory personnel action against an employee for disclosing information to the comptroller. It also prohibits holding an employee liable for any civil damages resulting from such a disclosure.

Whistleblowers who believe they are subjected to, or threatened with, retaliation for their action can notify the comptroller, who must investigate. Employees can bring a civil suit in Superior Court within 30 days of learning of the action or threatened action, but they must first exhaust all available administrative remedies (e.g., employee appeals process). If the court finds for the employee, it may order back pay, restoration of benefits, reasonable attorneys' fees, and any other damages.

The bill creates a rebuttable presumption that any negative personnel action taken or threatened against an employee who discloses information to the comptroller is retaliatory if it occurs within one year of the disclosure.

Finally, it requires nursing homes and nursing facility management services agencies to post whistleblower protection provisions in the facility so that they are readily accessible to employees.

Current law prohibits an employer from taking negative personnel action against an employee for disclosing to a public body a violation or suspected violation of federal or state laws and regulations or municipal ordinances or regulations. Any employee subject to such retaliation may, after exhausting all administrative remedies, bring a civil suit in Superior Court within 90 days of the violation or final administrative decision, whichever is later. The court may (1) order the employer to reinstate the employee, pay back wages, or reestablish benefits, as the case may be, and (2) award the prevailing party costs and reasonable attorneys' fees. Employers may discipline employees who knowingly make a false report (CGS § 31-51m).

## **§ 14 — DPH AND DSS INVESTIGATIONS**

The bill allows the DPH commissioner when conducting an inquiry, investigation, or hearing involving any healthcare institution to (1) issue subpoenas and (2) order the production of books, records, and documents. The law already allows the commissioner to inspect facilities, administer oaths, and take testimony under oath.

The bill also allows the DSS commissioner, or his designee, to examine or audit the financial records of a nursing facility management services agency when the commissioner believes it is necessary or the Office of Health Care Access requests it. It requires nursing homes to maintain all financial information, data, and records of the operation of a nursing facility management services agency for at least 10 years. Current law requires this only for the nursing home itself. The bill does not establish record retention requirements for nursing facility management services agencies.

Finally, when conducting an inquiry, examination, or investigation of a nursing home or nursing facility management services agency, the bill allows the DSS commissioner, or his agent, to (1) issue subpoenas; (2) order the production of books, records, or documents; (3) administer oaths; and (4) take testimony under oath. The commissioner may also ask the attorney general to petition the Superior Court to enforce any subpoena or order.

## **§§ 17 & 18 — NURSING HOME RECEIVERSHIP**

### ***Conditions for appointment***

The bill adds “gross financial mismanagement” as a ground on which the court can appoint a receiver for a nursing home. It defines “gross financial mismanagement” as:

1. having more than 35% of the facility’s vendor accounts overdue by more than 120 days,
2. having payment of required employee pension and health insurance contributions that are more than 60 days overdue,
3. maintaining an unfavorable ratio of working capital assets to

liability for more than one fiscal year,

4. incurring significant operating losses or maintaining minimal equity or reserves for more than one fiscal year, and
5. any other criteria DSS defines in regulations.

Currently, a court may appoint a receiver for a nursing home if the home (1) is operating without a license or its license has been suspended or revoked; (2) intends to close and has not made adequate arrangements to relocate its residents at least 30 days before closing; (3) experienced or is likely to experience a serious financial loss or failure that jeopardizes the health and safety of its residents; or (4) substantially violates the Public Health Code, other state laws, or Medicaid or Medicare rules.

In addition to appointing a receiver for the home, the bill also allows the court to appoint a receiver for (1) the home's nursing facility management services agency, (2) any owner of the property on which the home is located or the buildings it uses, or (3) any legal entity owned or managed by a related party to the nursing home owner. The bill defines "related party" as an individual or organization related to a nursing home owner through an ability to control, ownership, family relationship or business association that includes individuals related through marriage.

It allows the court to issue any necessary orders to a person or entity that controls or possesses assets necessary for the receiver to fulfill his or her responsibilities.

### ***Choice of Nursing Home Receivers***

Current law requires a court, in appointing a receiver for a nursing home, to choose a responsible individual who (1) the DSS and DPH commissioners propose and (2) is a Connecticut-licensed nursing home administrator with substantial experience in operating Connecticut nursing homes. The bill allows the court to appoint an unlicensed person if the individual has other experience and education the court

deems satisfactory.

By law, a court may require the DPH commissioner to pay a nursing home receiver's fees if it determines that the home's assets are insufficient and no other payment source is available. The state has a claim on the home's assets for these payments. The bill gives the state a claim for any advance payments the state makes after the receiver's appointment. It adds these costs to the requirement that the claims for receiver's fees have priority over all other creditors' claims, but removes the limitation that these claims have priority to the extent allowed by state or federal law.

### **§§ 11, 15, & 19 — NURSING FACILITY MANAGEMENT SERVICES CERTIFICATION**

The bill adds to the required information an applicant must submit to DPH in order to obtain a nursing facility management services certificate. It defines a "nursing facility management services agency" as an individual or entity that provides services to a nursing facility to manage the operations of the facility, including the provision of care and services.

#### ***Contact Information***

It requires an applicant to provide the names of (1) its officers, directors, trustees or managing and general partners, and (2) anyone having 10% or more beneficial ownership interest in the applicant and a description of their relationship to the applicant. If the applicant is an out-of state corporation, it must also provide a certificate of good standing from the agency in that state that oversees corporations.

Current law requires an applicant to provide only its name and business address and indicate whether it is an individual, partnership, corporation or other legal entity.

#### ***Affidavits***

The bill requires that each individual listed above, instead of just the applicants, sign the affidavits that current law requires applicants to submit disclosing the following:

1. any matter in which the person was convicted of or pleaded nolo contendere to a felony charge, or was held liable or enjoined in a civil action, if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property; or
2. whether the person (1) has, within the past five years, had any state or federal license or permit suspended or revoked as a result of a government action related to health care or business activity, including actions affecting the operation of a nursing, continuing care, or residential care home in Connecticut or elsewhere; or (2) is subject to a current injunction, restrictive, or remedial court order at the time of the application.

***Disclosure of additional nursing homes***

The bill requires an applicant to disclose the location and description of any out-of-state nursing home in which it provides management services currently or provided such services in the past five years.

***Certification Determinations***

The bill adds two conditions under which DPH may wholly or partially refuse to issue or renew a certificate. It can deny certification to an applicant that provided services in an out-of-state nursing home that showed substantial noncompliance with that state's applicable laws and regulations. And it can deny an applicant certification to provide services at specific nursing homes that show substantial noncompliance with state laws and regulations other than the Public Health Code. The law already permits such denial for substantial noncompliance with the code. The bill requires agencies to submit information in their renewal applications showing that the homes they serve comply with these requirements.

***Investigations***

The bill allows DPH to conduct an inquiry or investigation concerning the issuance or renewal of a nursing facility management



services certificate.

It also permits DPH, when the attorney general advises it, to conduct an investigation and seek an injunction or other action against an uncertified nursing facility management services agency. Current law allows this for unlicensed health care institutions.

### **Penalties**

Under current law, if DPH finds substantial noncompliance with the certification requirements, the commissioner can initiate disciplinary action against an agency. The bill permits DPH to take disciplinary action if it finds that an out-of-state nursing home for which the agency has provided services has substantially failed to comply with that state's applicable laws and regulations.

The bill also allows the commissioner to impose a civil penalty on the management services agency of up to \$15,000 per violation for any class A or class B violation that occurs at a nursing home at which it provides management services. (A class A violation is one that presents an immediate danger of death or serious harm to a nursing home patient; a class B violation is one that presents a probability of death or serious harm.) If the fine is not paid within 15 days, or 15 days after a final Superior Court judgment on an appeal, the DPH commissioner must notify the DSS commissioner, who may immediately withhold the amount of the civil penalty from the nursing home's next Medicaid payment.

The bill also allows the DPH commissioner to impose a civil penalty of up to \$1,000 per day against an individual or entity operating without a certificate.

### **§§ 8, 9, & 19 — RENT, LOAN AND MANAGEMENT FEE RESTRICTIONS**

The bill establishes the following restrictions on rent, loans, and management fees a nursing home pays. It:

1. prohibits a property owner related to a nursing home from

setting payments for rent or property improvements that exceed the fair rental allowance DSS sets for the home;

2. requires a nursing home owner to use the proceeds of a loan guaranteed with nursing home assets solely for the home's operation and improvement; and
3. prohibits a certified nursing facility management services agency related to a nursing home owner from being paid fees, including expenses from a facility for which it provides services, that exceeds the management fee DSS sets for the home.

The bill defines "related party" as an individual or organization related to a nursing home owner through an ability to control, ownership, family relationship, business association, including individuals related through marriage.

The bill allows the DPH commissioner to take certain enforcement actions for violations, including revoking or suspending the home's license, restricting its acquisition of other facilities, and imposing a civil penalty of up to \$25,000 for loan and rental payment violations and \$15,000 for management fee violations.

## **§ 1 — CERTIFICATE OF NEED**

The bill requires a nursing home to apply to DSS for a CON whenever a transfer of its ownership or control is proposed, not just when this occurs before the home is first licensed. Because of the current moratorium on new nursing home beds, entities can assume ownership of existing beds only through such a transfer. Therefore, DSS is not currently issuing CONs for such transfers.

The bill applies to all proposed transfers the current requirement that a CON applicant submit a letter of intent to DSS before submitting the CON application. It consequently extends to any home proposing an ownership or control transfer the current requirement that it notify the Office of the Long Term Care Ombudsman that it has submitted a letter of intent. It exempts all proposed transfers from the requirement

that the letter of intent include the capital costs, location, and project description.

The bill adds the following factors for DSS to consider when it reviews a CON application: the applicant's financial viability, the impact of the transfer on the home's payment rate, and the applicant's financial condition. The law already requires DSS to consider the applicant's financial responsibility and business interests and whether it able to continue to provide needed services.

### **§ 16 — NURSING HOME ACQUISITION**

The law prohibits a nursing home operator who has violated the nursing home laws or had nursing home problems related to Medicare and Medicaid from acquiring a nursing home for five years. It applies to an operator with any civil penalties for nursing home violations imposed by DPH or another state over two years. The prohibition against such acquisition also applies to operators who have received sanctions imposed by Medicare or Medicaid or had their provider agreements for these programs terminated or not renewed.

Under the bill, an application to acquire a nursing home must include whether the potential owner or licensee has had (1) any civil penalties imposed by DPH or another state during the two years before submitting the application, rather than any two-year period or (2) in any state, sanctions, other than civil penalties under \$10,000, imposed by Medicare or Medicaid. (Current law requires the inclusion of any intermediate sanctions imposed by Medicare or Medicaid.) The application must also include any additional information the DPH commissioner deems necessary. Under the bill, it appears that if any of these conditions is present, the five-year prohibition on further acquisition continues to apply.

Notwithstanding these limitations, the bill specifies that the DPH commissioner, for good cause, may approve an application to acquire a nursing home by a potential licensee or owner before the five-year period expires.

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**§ 13 — CHANGES IN BENEFICIAL OWNERSHIP**

Current law requires DPH to give its prior approval if a change occurs in ownership or beneficial ownership of 10% or more of the stock of a corporation that owns, operates, or maintains a nursing home. The bill specifies that beneficial ownership includes ownership through any level or relationship of parent and subsidiary corporations and partnerships.

It also requires the owner to provide to DPH the identities of, and any additional required information regarding, individual shareholders, partners or members that have a beneficial interest in the facility.

**§ 12 — FACILITY MAINTENANCE AND REPAIRS**

Under current law, nursing home property or building owners that are not the home's license holder must submit a copy of the lease agreement to DPH indicating the person or entity responsible for maintenance and repair. The lease must be submitted whenever the institution's license is renewed and whenever the property owner changes.

Instead of submitting the lease agreement, the bill requires property or building owners to obtain, biennially, a DPH certificate indicating that the property or building complies with the Public Health Code requirements governing property maintenance and repair. It also requires the nursing home's licensee to comply with the code or any related consent order as a condition of DPH licensure.

The bill prohibits DPH from issuing a certificate unless the owner submits the required information and passes a facility inspection. If its investigation reveals any code violation, DPH may require the owner to sign a consent order. The order must include provisions for a civil penalty of up to \$1,000 per day that may be assessed against any owner who violates the consent order. And it may include the appointment of a temporary manager to complete any required improvements or repairs. The temporary manager may ask DSS for

advanced Medicaid payments to pay for these. The bill allows the attorney general, at the request of the DPH commissioner, to petition the Superior Court for injunctive relief to ensure compliance with the consent order.

## **§ 10 — MINIMUM LIABILITY INSURANCE COVERAGE**

The bill requires a nursing home owner to submit an insurance certificate to DPH proving compliance with the following minimum liability insurance requirements:

1. \$2 million for the injury or death of anyone due to negligence or medical malpractice and \$10 million per accident or event, and
2. \$50,000 per accident or event for property damages.

It requires the commissioner to adopt regulations to establish additional insurance requirements and authorizes him to increase minimum coverage amounts if he determines this is necessary to protect public safety and welfare.

By law, nursing home owners must submit certificates of malpractice and public liability insurance coverage to DPH as a condition of licensure; the law does not specify minimum coverage amounts.

## **§ 2 — NURSING HOME FINANCIAL ADVISORY COMMITTEE**

The bill removes three members from the Nursing Home Financial Advisory Committee: the director of the Office of Fiscal Analysis or his designee and one representative each from the nonprofit and for-profit nursing home industries. The DSS and DPH commissioners or their designees, the secretary of OPM or his designee, and the executive director of the Connecticut Health and Educational Facilities Authority (CHEFA) or his designee remain committee members.

The bill requires the committee to recommend appropriate action to the DPH commissioner, as it must currently do for the DSS commissioner, when it receives a report relating to nursing homes'

financial solvency and quality of care. And, starting January 1, 2010, it requires the committee to report annually on its activities to the Appropriations Committee, as well as the Human Services, Public Health, and Aging committees.

The Nursing Home Financial Advisory Committee examines nursing homes' financial solvency, supports DSS and DPH's oversight mission, and recommends appropriate action for improving the financial condition of any home in financial distress.

## **§ 5 — REGULATIONS**

The bill repeals DSS' authority, in conjunction with DPH, to adopt regulations to establish reporting requirements regarding nursing homes' financial solvency and quality of care. These reports are submitted to the Nursing Home Financial Advisory Committee to help determine the financial viability of nursing homes and identify those experiencing financial distress (CGS §17b-4 (c)).

## **BACKGROUND**

### ***Related Bills***

Senate Bill 577, reported by the Public Health and Appropriations committees, makes changes to the membership of the Nursing Home Financial Advisory Committee and expands its authority concerning the financial solvency of nursing homes.

Senate Bill 5864, reported by the Public Health and Appropriations committees, makes changes to the CON process for nursing homes.

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute Change of Reference  
Yea 17 Nay 1 (03/18/2008)

Appropriations Committee

Joint Favorable

Yea    54    Nay   0    (03/28/2008)